

VOLCLAY



No. 9-275A081
Date OCT 2 1979
Fee \$50.00

October 1, 1979 10857
RECORDATION No. Filed 1425

ICC Washington, D. C.

Ms. Agatha L. Mergenovich
Secretary of the Interstate
Commerce Commission
Washington, D.C. 20423

OCT 2 1979-1 40 PM

INTERSTATE COMMERCE COMMISSION

New Number

Re: Equipment Lease Agreement

Dear Madam:

There are enclosed for recordation pursuant to Section 11303 of the Revised Interstate Commerce Act an original and two executed copies of an Equipment Lease Agreement. The pertinent information with regard to the transaction is as follows:

Parties to Transaction

Lessor: MDFC Equipment Leasing Corporation
3855 Lakewood Blvd.
Long Beach, California 90846

Lessee: American Colloid Company
5100 Suffield Ct.
Skokie, Illinois 60077

RECEIVED
OCT 2 1 35 PM '79
I.C.C.
FEE OPERATION BR

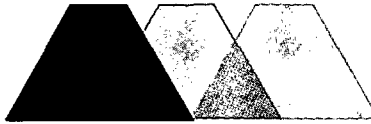
Description of Equipment

| <u>Item</u> | <u>Reporting Mark Numbers</u> |
|--|-------------------------------|
| 35 new, 100 ton, 4000 cubic foot, covered hopper railroad cars | LOVX 41001-41035, inclusive |

There is also enclosed a check in the amount of \$50 in payment of the recordation fee.

Claremont - New w Keller

VOLCLAY



Ms. Agatha L. Mergenovich
October 1, 1979
Page Two

The original of the Equipment Lease Agreement should be returned to, Allen H. Harrison, Jr., Wilmer, Cutler & Pickering, 1666 K Street, N.W., Washington, D.C. 20006.

Very truly yours,

AMERICAN COLLOID COMPANY

By: _____

Allen H. Harrison, Jr.
President

Encl.

Interstate Commerce Commission
Washington, D.C. 20423

⁹
10/2/79

OFFICE OF THE SECRETARY

Allen H. Harrison, Jr.
Wilmer, Cutler & Pickering
1666 K. Street, N.W.
Washington, D.C. 20006

Sir:
Dear

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 10/2/79 at 1:40pm, and assigned recordation number(s). 10857

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

ICC File COPY
RECORDATION NO. 10857
OCT 2 1979-1 40 PM
INTERSTATE COMMERCE COMMISSION
Filed 1425

MDFC EQUIPMENT LEASING CORPORATION

3855 Lakewood Boulevard, Long Beach, California 90846

EQUIPMENT LEASE AGREEMENT

Equipment Lease No. 278

THIS LEASE, dated as of this 17th day of September, 1979,
by and between MDFC EQUIPMENT LEASING CORPORATION, a Delaware
Corporation, (hereinafter called "Lessor"), and AMERICAN COLLOID
COMPANY a Delaware Corporation, (hereinafter called "Lessee"),
and Lessor and Lessee hereby agree as follows:

W I T N E S S E T H :

1. Lease. Lessor hereby agrees to lease to Lessee and
Lessee hereby agrees to hire from Lessor the thirty-five (35),
new 100-ton covered hopper railroad cars (hereinafter collectively
called "equipment", and individually called a "unit of equipment")
described in the Individual Equipment Record or Records (herein-
after called "IER" or "IERS") to be attached hereto as Exhibit
"A" and made a part hereof, or any subsequent IERS which may
hereafter be made a part hereof as same are executed from time
to time by the parties hereto upon the terms and conditions set
forth in this Lease, as supplemented by the terms and conditions
set forth in the appropriate IER identifying such units of equip-
ment. Whenever reference is made herein to "this Lease" it shall
be deemed to include the IER or each of the various IERS identify-
ing all units of equipment, all of which constitute one undivided
lease of the equipment and the terms and conditions of which are
incorporated herein by reference and made a part hereof.

2. Term. The term of this Lease for any unit of equipment shall be as set forth on the IER applicable to such equipment and shall commence for each unit or units of equipment on the date shown on the applicable IER.- The word "term" as used herein shall also include any extensions of the original term.

3. Rent. Lessee shall pay Lessor rent with respect to each unit of equipment as stipulated in the IER or IERS without deduction or offset, in the amounts and at the times set forth in the IER or IERS. In the event Lessee shall be in default in the payment of any sum of money to be paid under this Lease, the Lessee shall pay Lessor, as additional rental, to the extent permitted by applicable law, interest on unpaid rent from its due date (without regard to any grace period) to date of payment at the rate of 10% per annum, or such lesser amounts as may represent the maximum permitted by applicable law. Rent shall be payable at the office of Lessor, or its assigns, at 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Controller (18A-36), or at such other place as Lessor may from time to time designate in writing.

4. Taxes Against Lessor or Equipment. Lessee agrees to pay and to indemnify and hold Lessor harmless from and against, all license and registration fees and sales, use, personal property, stamp or other taxes, levies, imposts, duties, charges or withholdings of any nature whatsoever, together with any penalties, fines or interest thereon (collectively called "taxes, fees or other charges") imposed against Lessor, Lessee or the equipment or any part thereof by any Federal, state or local government or taxing authority, during the term or in connection with the termi-

nation of this Lease, or with respect to the equipment or any part thereof, or upon the purchase, ownership, delivery, leasing, possession, use, operation, return or other disposition thereof, or upon the rentals, receipts or earnings arising therefrom, or upon or with respect to this Lease (excluding, however, (i) any taxes imposed by the Federal government on, based on, or measured by, the net income of the Lessor, and (ii) any income or franchise taxes imposed by any taxing authority other than the Federal government on, based on, or measured by, the net income of the Lessor which in the aggregate do not exceed the amount of any such taxes which would be payable to the taxing authorities of the jurisdictions, other than the United States of America, in which Lessor has its principal place of business if there was no allocation or apportionment to any other taxing authority), unless, and to the extent only that, any such taxes, fees and other charges are being contested by Lessee in good faith and by appropriate proceedings, and the equipment concerned is not exposed to any danger of loss, seizure, forfeiture or confiscation. In case any report or return is required to be made with respect to any obligation of Lessee under this Section or arising out of this Section, Lessee will either make such report or return in such manner as will show the ownership of the equipment in Lessor and send a copy of such report or return to Lessor or will notify Lessor of such requirement and make such report or return in such manner as shall be satisfactory to Lessor; provided, however, Lessor shall furnish to Lessee any information requested by Lessee in writing to complete any such report or return. Anything contained in this Section to the contrary notwithstanding, if Lessor shall assign or convey its right, title

and interest in and to this Lease and/or the equipment, Lessee shall not be obligated to pay any taxes, levies, imposts, duties, charges or withholdings of any nature imposed against Lessor, Lessee or the equipment which would not have been imposed had such assignment or conveyance not occurred. If claim is made against Lessor for any such taxes referred to in this Section, Lessor shall promptly notify Lessee. If reasonably requested by Lessee in writing, Lessor shall, at Lessee's expense, take such action as Lessee may reasonably request with respect to such asserted liability, and if reasonably so requested by Lessee, any payment by Lessor of such tax shall be made under protest, if protest is necessary and proper. If payment is made, Lessor shall, at Lessee's expense, take such action as Lessee may reasonably request to recover such payment and shall, if requested, permit Lessee in Lessor's name to file a claim or prosecute an action to recover such payment. All of the obligations of Lessee under this Section with respect to any fees, taxes, levies, imposts, duties, charges or withholdings (together with any penalties, fines or interest thereon) imposed or accrued before the expiration or other termination of this Lease shall continue in full force and effect notwithstanding such expiration or other termination and are expressly made for the benefit of, and shall be enforceable by, Lessor.

Lessor and Lessee covenant and agree that Lessor shall have the sole right to utilize and to claim the investment tax credit and depreciation deductions with respect to the equipment in the computation of Federal, state and local tax returns and reports for any year during the term of this Lease, and that Lessee shall

not utilize or claim or attempt to utilize or claim said investment tax credit or depreciation deductions for any tax purposes whatsoever.

5. Lessee's Failure to Pay Taxes, Insurance, Etc.

Should Lessee fail after demand by Lessor to make any payment or do any act as herein provided, then Lessor shall have the right, but not the obligation, without notice to or demand upon Lessee, and without releasing Lessee from any obligation hereunder, to make or do the same, and to pay, purchase, contest or compromise any encumbrance, charge or lien which in Lessor's judgment appears to affect the equipment, and in exercising any such rights, incur any liability and expend whatever amounts in its absolute discretion it may deem necessary therefor. Notwithstanding the foregoing, Lessor shall not be obligated to make such demand with respect to any unit of equipment if such unit item of equipment is in imminent danger of seizure, confiscation or sale. All sums so incurred or expended by Lessor shall be without demand immediately due and payable by Lessee and shall bear interest at the rate of 10% rate per annum, but Lessor will promptly notify Lessee of all sums so incurred or expended.

6. Use. Lessee shall use, operate, maintain and store the equipment in a careful and proper manner and shall comply with all laws, ordinances and regulations in any way relating to the possession, use, operation or maintenance of the equipment. Lessee warrants and agrees that the equipment will at all times be used and operated under and in compliance with the laws of the jurisdictions in which the equipment may be located and operated, the Interchange Rules of the Association of American Railroads (if

applicable), and with all applicable, laws, ordinances, rules, regulations, requirements and orders of any judicial, legislative or regulatory body having power to regulate or supervise the use or operation of the equipment including, but not limited to, the rules and regulations of the United States Department of Transportation, the Interstate Commerce Commission, and the Association of American Railroads (including, but not limited to, the Mechanical Division thereof) Lessee further warrants and agrees that the equipment will be used on the lines of railroads over which Lessee has operating rights or over which railroad equipment of Lessee is regularly operated pursuant to contract or upon other railroads in the usual interchange of traffic (if such interchange is customary at the time); provided, however, that Lessee will not permit the equipment to be located or used outside of the United States of America and the Canadian provinces of Quebec and Ontario. Lessee shall not cause or permit any liens, charges or encumbrances to be placed on or levied against the equipment other than liens, charges or encumbrances placed thereon by Lessor or by persons claiming directly against or through Lessor only. Lessee agrees to procure and maintain in effect all licenses, certificates, permits, approvals and consents required by federal, state, county, municipal, or foreign laws and regulations pertaining to the possession, use operation and maintenance of the equipment. After an Event of Default or the occurrence of an event which with the passage of time and/or notice would constitute an Event of Default or upon reasonable demand by Lessor; Lessee shall give Lessor written notice of the exact location of each unit of equipment.

7. Identification Marks. Lessee, at Lessee's expense, shall cause each unit of equipment to be kept numbered with its reporting mark as set forth in the IER with respect thereto and will keep and maintain, plainly, distinctly, permanently and conspicuously marked by a plate or stencil printed in contrasting color upon each side of each unit of equipment in letters not less than one inch in height as follows:

"MDFC Equipment Leasing Corporation owner and Lessor under a Lease Agreement filed and recorded with the Interstate Commerce Commission pursuant to Section 11303 of the Revised Interstate Commerce Act"

with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Lessor to such unit of equipment, its rights under this Lease and the rights of any assignee of Lessor hereof. The Lessee will not place any such unit of equipment in operation or exercise any control or dominion over the same until the required legend shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, defaced or destroyed. The Lessee will not change the reporting mark of any unit of equipment, except with the consent of the Lessor and in accordance with a statement of new reporting marks to be substituted therefor, which consent and statement previously shall have been filed with the Lessor by the Lessee, and filed, recorded or deposited by Lessee in all public offices where this Lease shall have been filed, recorded or deposited. Except as above provided, Lessee will not allow the name of any person, association or corporation to be placed on the equipment as a designation that might be interpreted as a claim of owner-

ship; provided, however, that the Lessee may cause the equipment to be lettered with the names or initials or other insignia customarily used by Lessee on railroad equipment used by them of the same or a similar type for convenience of identification. Lessee shall indemnify Lessor, and any assignee of Lessor hereof, against any liability, loss or expense incurred by any of them as a result of the aforesaid marking of the equipment with such name, initials or insignia.

8. Alterations. Lessee shall not make any alterations, additions or improvements to the equipment without the prior written consent of Lessor. All such alterations, additions or improvements shall become the property of Lessor, shall be free of all encumbrances, and Lessee shall provide a bill of sale therefor to Lessor. The Lessee shall make no other additions or improvements to the equipment, unless the same are readily removable without causing damage to such equipment. Title to such readily removable additions or improvements shall remain with Lessee, provided no Event of Default has occurred. The equipment shall remain personal property regardless of whether it becomes affixed or attached to real property or permanently rests upon any real property or any improvement thereon.

9. Maintenance and Repair. Lessee, at its sole cost and expense shall (i) keep the equipment in good operating order, repair, condition and appearance and shall furnish any and all parts, mechanisms or devices required to keep the equipment in good working order; (ii) maintain the equipment in a careful and proper manner and in compliance with all applicable laws, ordinances, rules, requirements and regulations

now or hereafter in effect including, without limitation, the rules of the United States Department of Transportation and the Interstate Commerce Commission and the current Interchange Rules, or supplements thereto, of the Mechanical Division, Association of American Railroads and all manufacturer's instructions and warranty requirements; and (iii) pay for all fuel, service, inspections, overhauls, replacements, substitutions, materials and labor necessary or desirable for the proper use, repair, operation and maintenance of the equipment.

10. Delivery Inspection; Acceptance. Prior to execution of any IER, Lessee shall have made all necessary inspections and tests of the equipment referred to therein, at Lessee's sole expense, to determine whether the equipment conforms to the specifications selected by Lessee. If the equipment is found to be acceptable, by Lessee, Lessee shall accept delivery of such equipment and execute and deliver to Lessor an IER stating that such equipment has been inspected and accepted by Lessee on the date of such IER, whereupon such equipment shall be deemed to have been delivered and accepted by Lessee and shall be subject thereafter to all the terms and conditions of the Lease. Lessee shall advise Lessor in writing at the time of execution of the IER, of any defect or objection to the type or condition of the equipment. Lessee's failure to advise Lessor of any defect or objection with respect to any item of equipment shall not establish the absence of any such defect in any equipment insofar as the manufacturer or supplier thereof is concerned. Upon execution of the IER by Lessee the equipment shall be deemed to conform to Lessee's specifications, all applicable United States Department

of Transportation, Interstate Commerce Commission and Association of American Railroad requirements and specifications, and shall be deemed to be in good condition and without defects. Lessee shall indemnify, exonerate and save harmless Lessor from all claims, damages, actions, expenses (including attorneys' fees), any liabilities of any kind arising out of or connected with the failure or refusal of Lessee to accept, or the delay of Lessee in accepting, the equipment or any unit of equipment.

11. Inspection; Lessee Reports. Lessor shall at any time during normal business hours have the right to enter any premises where the equipment may be located for the purpose of inspecting and examining the equipment, its condition, use, and operation to ensure compliance by Lessee with its obligations under this Lease, notwithstanding that Lessor shall have no duty to inspect and shall not incur any liability or obligation by reason of not making any such inspection.

Lessee shall immediately notify Lessor of any accident connected with the use, operation or malfunction of the equipment, including in such report the time, place and nature of the accident, the damage caused to property, the names and addresses of persons injured and of witnesses, and such other information as may be pertinent to Lessor's investigation of such accident.

Lessee shall notify Lessor in writing within ten (10) days after any attachment, tax lien or other judicial process shall purport to attach to any unit of equipment.

Lessee shall, as soon as practicable after the close of each fiscal year of Lessee, furnish to Lessor copies of Lessee's financial reports prepared by it as of the close of the fiscal

year ended, including Lessee's balance sheet and profit and loss statement, with said financial reports to be certified to by a recognized firm of certified public accountants. Lessee also agrees to furnish Lessor during the term, promptly upon their availability, but no less than on a quarterly basis copies of all financial statements, reports, notices and proxy statements, sent by Lessee to its stockholders, and of all regular and periodic reports which Lessee may hereafter file with any of the principal securities exchanges. Further, Lessee agrees to furnish to Lessor from time to time such other information as Lessor may reasonably request.

12. Disclaimer. LESSOR IS NOT A MANUFACTURER OF THE EQUIPMENT OR A DEALER IN SIMILAR EQUIPMENT AND HAS NOT INSPECTED THE EQUIPMENT PRIOR TO ITS DELIVERY TO AND ACCEPTANCE BY LESSEE. LESSOR BY VIRTUE OF LEASING THE EQUIPMENT UNDER THIS LEASE OR BY VIRTUE OF ANY NEGOTIATIONS IN RESPECT TO THIS LEASE HAS NOT MADE, DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE CONDITION, QUALITY, DURABILITY, SUITABILITY, MERCHANTABILITY OR FITNESS FOR USE OR FITNESS FOR A PARTICULAR PURPOSE AND ANY OTHER WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE EQUIPMENT.

Lessee hereby waives any claim it might have against Lessor for any loss, damage or expense caused by the equipment or by any defect therein, use or maintenance thereof, or servicing or adjustment thereto. During the period of this Lease in which Lessee is not in default of its obligations, Lessor hereby assigns to Lessee, to the extent permissible by law, any manufacturer or dealer warranty, whether express or implied, pertaining to

the equipment covered by this Lease. All claims or actions on any warranty so assigned shall be made or prosecuted by Lessee, at its sole expense, and Lessor shall have no obligation whatsoever to make any claim on such warranty. Notwithstanding the foregoing, if any Event of Default occurs, Lessor shall be entitled to assume any litigation, or receive any recovery, by Lessee against the manufacturer or dealer. Lessor further authorizes Lessee to obtain whatever service to the equipment the manufacturer customarily renders, provided that no such service be at the expense of the Lessor.

13. Insurance. Unless and until there shall have occurred an Event of Default, or an event or occurrence which with the passage of time or notice would be an Event of Default, Lessee may self-insure as to property damage to, or loss of, the equipment. Lessee at its own expense shall procure and maintain public liability and property damage liability insurance with respect to the equipment as set forth in the IER. Said insurance shall not be excess over other coverage but shall be primary insurance up to and including the stated policy limits. Except as otherwise provided in any IER, all such insurance shall name Lessor and Lessee as insureds, and shall be in amounts and with companies approved by Lessor. Said policies shall provide that they may not lapse, terminate, or be altered or canceled by the insurer without at least thirty (30) days' prior written notice to Lessor. Losses shall be adjusted only with and paid to, Lessor and its assignee, if any. Said insurance shall be satisfactory to Lessor and shall contain such endorsements as may be requested by Lessor. Lessee

hereby appoints Lessor as Lessee's attorney-in-fact to make claim for, receive payment of and execute and endorse all documents, checks or drafts for loss or damage under any insurance policy issued pertaining to the equipment. The insurance required herein shall continue until said equipment is returned to Lessor. Lessee shall furnish Lessor with accurate and complete copies of all insurance policies, endorsements or renewals applicable to the equipment as soon as they become available to Lessee. For purposes of this Lease, the "Stipulated Loss Value" as of any date of computation is that dollar amount in the applicable IER opposite the rental payment last received by Lessor.

14. Risk, Event of Loss, Condemnation.

(a) Risk: Commencing at the time such risks pass to Lessor from the vendor of the equipment and continuing until the termination of this Lease and the return by Lessee of the equipment to Lessor, Lessee assumes the entire risk of any Event of Loss as defined below or any liability of Lessor from any cause whatsoever, and no such Event of Loss or liability shall relieve Lessee of its obligation hereunder.

(b) Definition - Event of Loss: For purposes of this Section an Event of Loss with respect to any unit of equipment shall mean any of the following events with respect to such unit of equipment: (i) the actual or constructive total loss of such unit of equipment; (ii) such unit of equipment shall become lost, stolen, destroyed, damaged beyond repair or permanently rendered unfit for intended use for any reason whatsoever; (iii) the appropriation, condemnation, confiscation or seizure of, such unit of equipment; or (iv) requisition of title to or use of such equipment.

(c) Deprivation Constituting an Event of Loss:
Upon the occurrence of an Event of Loss, Lessee shall pay or cause to be paid in immediately available funds upon demand: (i) accrued rentals on a daily basis, if any, in respect of such unit of equipment to the date of such Event of Loss, (ii) the Stipulated Loss Value computed as of the date of such Event of Loss, less any rentals previously paid in respect of such unit of equipment for the period subsequent to the date of such Event of Loss, (iii) interest on the unpaid balance of said amount at the rate of 10% per annum from ten (10) days after the date of such Event of Loss

to the date of receipt by Lessor, and (iv) all other unpaid amounts due hereunder. At such time as Lessor has received the sum of (i), (ii), (iii) and (iv) above, the obligation of Lessee to pay rent hereunder with respect to such unit of equipment shall terminate and Lessor will quitclaim and transfer to Lessee, without recourse or warranty (express or implied) all of Lessor's right, title and interest, if any, in and to the equipment with respect to which such Event of Loss occurred.

(d) Deprivation Not Constituting an Event of Loss: In the event of damage to any unit of equipment not constituting an Event of Loss, Lessee shall promptly notify Lessor in writing of all such damage in excess of \$5,000, and, shall remain obligated to make all payments of rent for such equipment which may become due hereunder in the same manner as if such damage had not occurred. Lessee shall at its own expense repair and restore such unit of equipment to the condition it was in immediately prior to the occurrence of such damage. So long as no Event of Default (or event which with the passage of time or notice would be an Event of Default) shall have occurred and be continuing, all payments from insurance proceeds or otherwise with respect to any such damage received by Lessor shall be paid over to Lessee upon receipt of satisfactory evidence by Lessor that Lessee has repaired or contracted to repair such equipment, but otherwise, all such payments shall be paid over to and retained by Lessor.

(e) Application of Payments: Upon the occurrence of any Event of Loss, Lessor shall be entitled to and shall receive the entire award, judgment, settlement, insurance proceeds or payments and all installments thereof to the extent of Lessee's

obligation under 14(c) hereof; and any surplus shall be promptly remitted to Lessee. Lessee hereby assigns to Lessor any right or interest Lessee may have or may hereafter acquire in any such award, judgment, settlement, insurance proceeds or payment.

15. Indemnity. Lessee agrees to defend at its own cost and to indemnify and hold harmless Lessor, its officers, agents and employees, from and against any and all loss, claims, patent infringements, costs, expenses, damage and liabilities (including reasonable attorneys' fees), however caused, resulting directly or indirectly in any manner from the purchase agreement between Itel Corporation ("Itel") and Portec, Inc., the assignment of such purchase agreement between Lessor and Itel, this Lease, the ownership, purchase, delivery, leasing, possession or return of the equipment, or the use, condition (including without limitation latent or other defects whether or not discoverable) or operation, of the equipment, or the performance of this Lease (including without limitation such loss, claims, costs, expenses, damages and liabilities arising from the death or injury to officers, agents or employees of Lessee or Lessor or any third person, or damage to the property of Lessee or Lessor, their officers, agents or employees, or any third person, firm or corporation); except for such damages, losses, expenses or liabilities arising from or out of the gross negligence or willful misconduct of Lessor, its officers, agents or employees. This indemnification shall survive the expiration or other termination of this Lease for the benefit of, and be enforceable by, Lessor.

16. Return of Equipment. Upon the expiration or earlier termination of this Lease, Lessee shall, at its sole cost and expense, have returned each unit of equipment to Lessor, free of all advertising or insignia placed thereon by Lessee (except Lessee's reporting mark) to any storage tracks in the Continental United States designated by Lessor not less than 90 days prior to the expiration of this Lease or earlier voluntary termination by Lessee pursuant to Section 27 hereof; provided, however, if Lessor fails to give such notice Lessee shall return the equipment to any reasonably maintained storage facilities which are located within a 25-mile radius of the intersection of State and Madison Streets in Chicago, Illinois, and inform Lessor in writing of the location selected by Lessee no less than 45 days prior to such expiration or termination date. At the time of delivery, each unit of equipment shall be empty, free from residue in the same good order and condition as when delivered to Lessee hereunder, normal wear and tear excepted, and in the condition and repair required according to the Interchange Rules of the Association of American Railroads. Lessee's obligation to pay rent with respect to each unit of equipment shall cease when it is returned to the storage facilities designated by Lessor and the term for such item of equipment has expired. Lessee shall, on demand, reimburse Lessor for the expense of cleaning any unit of equipment that contains residue or such other cost which may be incurred to place such unit of equipment in the condition described above. All movement of each unit of equipment is to be at the risk and expense of the Lessee.

If any unit of equipment is not returned to Lessor as here-

inabove provided, Lessee shall pay rental with respect to each unit of equipment involved for each day until such return at the rental rate required under this Lease, prorated on a daily basis. Lessee shall pay such rental to Lessor on or before the last day of each month for which Lessee is obligated to Lessor under this Section. In addition to any other indemnity provided herein and any payments to be made to Lessor hereunder, Lessee shall also indemnify and hold harmless Lessor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, including those asserted by a subsequent lessee or buyer from Lessor arising out of or as a result of such late delivery or failure to deliver the equipment or failure to deliver it in the condition required by this Lease. Said indemnity shall survive the termination of this Lease.

17. Default, Remedies, Damages:

(a) Defaults: The following conditions or events shall constitute Events of Default:

(1) Lessee shall fail to make any payment to Lessor when due under this lease and such failure to pay shall continue for a period of ten (10) days after written notification is sent by Lessor to Lessee; or

(2) There shall occur any termination or alteration in the scope of the coverage of, or reduction in the maximum amounts payable under, any insurance maintained by Lessee pursuant to this Lease; or

(3) Lessee shall fail to perform or observe any other covenant, condition, or agreement to be performed or observed by it hereunder and such failure shall continue unremedied

for a period of thirty (30) days after written notice thereof is sent to Lessee by Lessor; or

(4) Any representation or warranty made by Lessee herein or in any document or certificate furnished to Lessor in connection herewith shall prove to be incorrect at any time in any material respect; or

(5) Any obligation of Lessee for the payment of borrowed money, for the deferred purchase price of property or for the payment of rent or hire under any lease shall not be paid; or

(6) Lessee shall become insolvent or voluntarily become the subject of proceedings under the Federal Bankruptcy laws, or make an assignment for the benefit of creditors or consent to the appointment of a trustee or receiver; or

(7) a trustee or a receiver shall be appointed for Lessee or for a substantial part of its property without its consent and shall not be dismissed within a period of sixty (60) days, or bankruptcy, reorganization, or insolvency proceedings shall be instituted against Lessee, and shall not be dismissed within a period of sixty (60) days.

(b) Remedies: Upon the occurrence of any Event of Default and at any time thereafter so long as the same shall be continuing, Lessor, at its option, may do one or more of the following with respect to any unit or all of the equipment.

(1) Proceed by appropriate court action or actions either at law or in equity, to enforce performance by Lessee of the applicable covenants of this Lease and to recover damages for the breach thereof;

(2) Repossess with or without notice and sue for the rentals due hereunder as they accrue without notice and at Lessee's cost and expense;

(3) Repossess and without terminating this Lease hold the equipment until Lessee shall have complied with all obligations under this Lease;

(4) Repossess with or without notice and sell, relet, use, hold or otherwise dispose of the equipment;

(5) Declare all unpaid rentals immediately due and payable;

(6) Repossess with or without notice and terminate this lease.

(c) Damages: Lessor and Lessee agree that the measure of damages is impossible to determine in the absence of prior agreement. Therefore, the parties agree that as damages for the loss of a bargain and not as a penalty in the case of sale or reletting after repossession Lessor shall be entitled to, in addition to other damages described herein:

(1) Sale: Where a sale has occurred, the deficiency between the Net Proceeds of Sale and the Stipulated Loss Value computed at the time of sale. Where Lessor elects not to sell the equipment, the difference between the Stipulated Loss Value at the time of determination and the Fair Market Sales Value.

(2) Reletting: Where a reletting has occurred, the deficiency between the aggregate rentals due under the reletting which is coterminus with the term of this Lease, discounted at Prime and the greater of (a) the Stipulated Loss Value computed of the time of reletting, or (b) the aggregate

unpaid rentals of this Lease discounted at Prime. Where a re-letting has not yet occurred, the deficiency between the Aggregate Fair Market Rental Value discounted at Prime and the greater of (a) the Stipulated Loss Value computed at the time of determination, or (b) aggregate unpaid lease rentals hereunder discounted at Prime.

(3) In addition to that set out in (1) and (2), Lessor shall be entitled to: (A) the unpaid rent from default until sale, reletting or determination by Lessor of damages, and (b) interest on all amounts due including rent and damages from date due until payment at the rate of 10% per annum.

For purposes of this Section the following definitions apply:

(i) Discounted. Reduction to present value as of the date of sale, reletting or determination of damages, whichever is applicable, at the stated interest rate and at a frequency equal to the frequency of rental payments under this Lease.

(ii) Aggregate Fair Market Rental Value or Aggregate Fair Market Sales Value. A value determined by a recognized independent appraiser selected by Lessor, exclusive of any cost and expense involved in moving or transporting the equipment.

(iii) Net Proceeds of Sale. The gross consideration received by Lessor less all expenses associated directly or indirectly with sale including but not limited to reasonable attorneys fees, and refurbishing, repair, advertising, freights, financing costs.

(iv) Prime. Best rate then charged by The Chase Manhattan Bank of New York for 90-day unsecured loans to substantial commercial borrowers.

(d) Each and every power and remedy herein specifically given to Lessor, shall be in addition to every other power and remedy specifically so given or now or hereafter existing at law or in equity, and each and every power or remedy may be exercised from time to time or simultaneously and as often and in such order as may be deemed expedient by Lessor. All such other or others. No delay or omission of Lessor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. If an Event of Default shall occur hereunder, Lessor may recover all of its reasonable expenses, costs and attorneys' fees, whether or not suit is actually commenced.

Lessee hereby appoints Lessor, Lessee's irrevocable agent and attorney-in-fact to execute all documents deemed necessary to release, terminate and void Lessee's interest in any equipment leased hereunder and to file said documents for recordation with appropriate agencies provided that an Event of Default has occurred and Lessor in its discretion deems use of this agency necessary to effect any remedy Lessor chooses to take.

18. Assignment by Lessee. So long as no Event of Default, or event which with the passage of time and/or notice would constitute an Event of Default, shall have occurred and be continuing, Lessee shall be entitled to the possession and use of the equipment in accordance with the terms of this Lease, but, without the prior written consent of Lessor, Lessee shall not transfer, assign, pledge or hypothecate this Lease, the equipment or any part thereof or any interest therein. Consent to any of the foregoing acts shall not be deemed to be consent to any subsequent similar act. Lessee may sublease the equipment, but any such sublease shall be subject and subordinate to all of the terms of this Lease and such sublease shall not affect, impair or diminish Lessee's duties and obligations or Lessor's rights under this Lease.

19. Assignment by Lessor. Lessor may assign, pledge or in any other way transfer this Lease either in whole or in part, or any interest therein without notice to Lessee and Lessee shall execute such consents thereto as may be required by Lessor. Should this Lease or any interest therein be assigned or should the rentals hereunder be assigned, no breach or default by Lessor of this Lease or any other agreement between Lessee and Lessor shall excuse performance by Lessee of any provision hereof, and no assignee shall be obligated to perform any covenant, condition or obligation required to be performed by Lessor hereunder. The right of such assignee to receive the rentals or to receive the equipment upon termination of this Lease shall be free of all defenses, setoffs and counterclaims which Lessee might now or hereafter be entitled to assert against Lessor.

20. Ownership by Lessor. The equipment is and shall at all times remain the sole and exclusive property of Lessor. The only interest Lessee shall have in the equipment is that of a lessee with the rights and interest described hereunder.

21. Suspension of Obligation of Lessor. The obligations of Lessor hereunder shall be suspended to the extent that it is hindered or prevented from complying therewith because of labor disturbances, including strikes and lockouts, acts of God, fires, storms, accidents, governmental regulations or interference or any cause whatsoever beyond the control of Lessor.

22. Prohibition Against Setoff, Counterclaim, Etc. Lessee's obligation to pay all amounts due hereunder shall be absolute and unconditional and shall not be affected by any circumstance, including without limitation (i) any setoff, counterclaim, defense, or other right which Lessee may have against Lessor, (ii) any defect in the title, condition, design, operation, or fitness for use of, or any damage to or loss or destruction of, the equipment, or any interruption or cessation in the use of possession thereof by Lessee for any reason whatsoever, or (iii) any insolvency, bankruptcy, reorganization or similar proceedings by or against Lessee.

Lessee hereby waives, to the extent permitted by applicable law, any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit, or surrender this Lease.

If for any reason whatsoever this Lease shall be terminated in whole or in part by operation of law, except as specifically provided herein, Lessee nonetheless agrees to pay to Lessor an

amount equal to each installment of rent at the time such installment would have become due and payable in accordance with the terms hereof had this Lease not been terminated in whole or in part. Each rent payment made by Lessee shall be final and Lessee will not seek to recover all or any part of such payment from Lessor for any reason whatsoever.

22. Representation, Warranties and Covenants of Lessee.

Lessee represents, warrants covenants: (i) at the time Lessor becomes owner of the equipment, the equipment will be new and unused and not have been placed in service by Lessee, (ii) that it is a duly organized corporation with necessary power and qualifications to do business and to perform this Lease and any exhibits thereto, (iii) that this Lease has been duly authorized by all necessary corporate action and will not contravene or breach any legal, organizational or contractual obligation binding upon Lessee, (iv) that this Lease constitutes a binding obligation enforceable in accordance with its terms, (v) that there are no suits or proceedings pending or threatened which may have an adverse effect on Lessee's financial condition or business, (vi) that no mortgage, deed of trust, charter, lien or security interest, of any type, will attach to the equipment, (vii) that taxes due from Lessee have been paid and Lessee's financial condition is represented in financial statements delivered to Lessor dated December 31, 1978; (viii) the execution and delivery of this Lease, and all documents entered into in connection with this Lease have been duly authorized by all necessary corporate and other action and, except as provided under Section 11303 of the Revised Interstate Commerce Act,

do not require the consent, approval or withholding of objection by any person, party or governmental agency and this Lease and such other documents constitute legal, valid and binding obligations of Lessee enforceable against Lessee in accordance with their respective terms; (ix) that Lessee will file and record this Lease with the Interstate Commerce Commission and in all other places suggested or advised by reputable counsel retained by Lessee in Canada, and (x) that, no other filing, recording or depositing, or any notice thereof, is necessary to protect the Lessor's title to the equipment.

23. Notices. All notices required under the terms and provisions hereof shall be in writing and addressed (i) if to Lessee:

American Colloid Company

5100 Suffield Court

Skokie, Illinois 60077

or at such other address as Lessee shall from time to time designate in writing to Lessor, or (ii) if to Lessor: MDFC Equipment Leasing Corporation, Attention: President, at 3855 Lakewood Boulevard, Long Beach, California 90846, or at such other address as Lessor shall from time to time designate in writing to Lessee.

24. Applicable Law, Modifications. This Lease shall be governed by and construed according to the laws of the State of California. The terms hereof shall not be waived, varied, contradicted, explained, amended or changed in any other manner except by an instrument in writing of even or subsequent date hereto, executed by both parties.

25. Recording, Registration and Filing. The Lessee agrees and covenants that prior to the delivery and acceptance of the first unit of equipment, Lessee will, at its sole expense, cause this Lease to be duly filed, registered or recorded in conformity with Section 11303 of the Revised Interstate Commerce Act and in other such places within or without the United States required by law or as Lessor may reasonably request and will furnish the Lessor proof of such filing, registration or recordation. In addition, Lessee will, as requested by Lessor, at Lessee's cost and expense, do and perform any other act and will execute, acknowledge, deliver, record and deposit and will re-file this Lease as required by law in the United States or requested by Lessor (or any assignee of Lessor), including without limitation, filing financing statements under the Uniform Commercial Code (which, notwithstanding the intent of Lessor and Lessee that this is a true Lease, Lessor shall have the right to file wherever and whenever Lessor requires), for the purpose of carrying out the intention of this Lease and in connection with any such action Lessee will deliver to Lessor proof of such filings and an opinion of counsel that such action has been properly taken. Lessee will also pay, or will upon demand, reimburse Lessor, for all of the reasonable out-of-pocket costs and expenses incurred by Lessor in connection with this Lease (other than its preparation) and for all fees and costs of any attorney specially retained by Lessor to take any action or proceeding to enforce the terms of this Lease.

26. Right of First Refusal.

(a) Provided (i) Lessee has not exercised

its right to terminate this Lease prior to the conclusion of the term of this Lease, and (ii) no Event of Default has occurred and is continuing hereunder, the Lessor agrees that, at the conclusion of the term of this Lease and for 120 days following the expiration thereof, it will not sell any Equipment unless the Lessor shall have given the Lessee at least 15 business days' prior written notice of any intended sale specifying the sales price, and the Lessee shall have the opportunity during said period to purchase all (but not less than all), the equipment at the same terms as specified in such notice.

(b) In the event the Lessee exercises such right of first refusal to purchase the equipment, then, upon payment of the purchase price, the Lessor shall, upon request of the Lessee, execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale (without representations or warranties) for such equipment, and such other documents as may be required to release such equipment from the terms and scope of this Lease and to transfer title thereto to the Lessee or such assignee or nominee, in such form as may reasonably be requested by Lessee, all at the Lessee's sole expense.

27. Right of Termination. Subject to compliance with all the conditions of this paragraph, and so long as no Event of Default (or event which, with notice or passage of time, or both, would constitute an Event of Default) shall have occurred and be continuing, Lessee shall have the right, at any time after the tenth anniversary of the commencement of the term of this

Lease, to terminate this Lease as to all, but not less than all, the equipment on not less than 180 days' prior written notice to Lessor specifying a proposed date of termination (which date shall be a date on which an installment of rent is due and payable), provided, however, that Lessee shall have made a good faith determination that the equipment has become obsolete or surplus to its requirements.

During the period from the giving of notice of termination until the date of termination specified therein, Lessee shall use its best efforts to obtain bids for Lessor for the cash purchase of the equipment. Lessor may, but shall not be obligated to do so, also obtain bids for the cash purchase of the equipment. In the event either party receives any bid, such party shall immediately, but in no event less than fifteen business days prior to the proposed date of sale, (which shall be the date of termination) certify to the other party in writing the amount of such bid, and the name and address of the person or entity (who shall not be Lessee or any person, firm or corporation affiliated with Lessee) submitting such bid. Lessee shall deliver the equipment in accordance with Section 16 hereof to the bidder, if any, which shall have submitted such highest bid no later than the date of termination, and Lessor shall, on an "as is" basis and without recourse or warranty simultaneously therewith sell such equipment for cash to such bidder, provided Lessee pays to Lessor the amount, if any, required by the following paragraph.

The total selling price realized at such sale shall be retained by Lessor and, in addition, on the date of such sale Lessee shall

pay to Lessor, in immediately available funds, the excess of (A) the sum of accrued and unpaid rent to and including the date of termination, any other obligations owed by Lessee to Lessor, and the Stipulated Loss Value for the equipment computed as of such date, over (B) the sale price of the equipment received by Lessor after deducting the costs, expenses and sales taxes, if any, incurred in connection with such sale.

In the event this sale is not consummated for any reason, or no prospective purchaser is obtained by Lessee or Lessor, this Lease shall be and continue in full force and effect; provided, however, in the event Lessee elects to terminate this Lease but is unable to obtain a purchaser, or the sale is not consummated for any reason, Lessee may nevertheless terminate this Lease by paying to Lessor on the termination date in immediately available funds an amount equal to: (a) accrued and unpaid rent to and including the date of termination (b) any other obligations owed by Lessee to Lessor, and, (c) the Stipulated Loss Value for the equipment computed as of such date.

In the event of consummation of the sale of the equipment pursuant to this Section, and upon compliance by Lessee with the provisions of this Lease pertaining to the return of the equipment, the obligations of Lessee with respect to the equipment shall cease and this Lease shall terminate, except for the indemnities contained in Sections 4, 7, 15 and 16 hereof and in Lease Addendum No. 1, which indemnities shall remain in full force and effect.

28. Renewal Options. Subject to compliance with all the conditions of this paragraph, and so long as no Event of Default (or event which, with notice or passage of time, or both, would constitute an Event of Default) shall have occurred and be continuing, Lessee shall have the right at the expiration of the term of this Lease, to extend this Lease as to all, but not less than all, the equipment for two successive, two-year terms. Lessee shall give written notice of any such option to extend this Lease or the initial two-year extension not less than 180 days prior to the expiration of this Lease or the initial two-year extension period. Said extension or extensions of this Lease shall be subject to all of the terms and provisions of this Lease; provided, however, Lessee shall pay to Lessor a fair market value rental at the times provided herein, in an amount determined by two recognized independent appraisers (one chosen by Lessee and one chosen by Lessor) 45 days prior to each such two-year extension, or if such appraisers cannot mutually agree on such rent, a fair market value rental shall be determined by a third independent appraiser chosen by the mutual consent of such two appraisers. If either party shall fail to appoint an appraiser within ten days of notice by the other party or if such two appraisers cannot agree on the value specified in such appraisal within fifteen days after their appointment and thereafter fail to appoint a third appraiser within ten days, then either party may apply to any court having jurisdiction, to make such appointment.

29. Time. Time is of the essence hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by their duly authorized officers on the day and year first written above.

Corporate Seal
of Lessor:

*Attest:
Charles J. Johnson
Secretary*

LESSOR:

MDFC EQUIPMENT LEASING CORPORATION

By: *Darryl R. Christensen*

Title: *Authorized Agent*

Corporate Seal
of Lessee:

*Mary Veronica Flynn
Asst. Sec'y*

LESSEE:

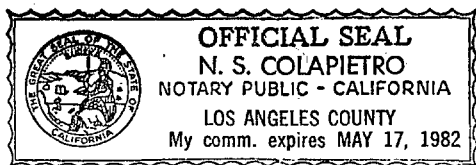
AMERICAN COLLOID COMPANY

By: *R. D. Harris*

Title: *President*

STATE OF CALIFORNIA)
) ss. :
COUNTY OF LOS ANGELES)

.On the 28th day of September 1979, before me personally appeared Gary L. Christensen, who, being duly sworn, did say that he is an Authorized Agent of MDFC Equipment Leasing Corporation, that one of the seals affixed to the foregoing instrument is the seal of said Corporation, and that said instrument was signed and sealed on behalf of said Corporation, by authority of its by-laws and by resolution of its board of directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.



N. S. Colapietro
Notary Public

(NOTARIAL SEAL)

My Commission expires May 17, 1982

STATE OF ILLINOIS)
)
COUNTY OF COOK)

On the 1st day of OCTOBER 1979, before me personally appeared ROY W. HARRIS, who, being duly sworn, did say that he is an Authorized Officer of American Colloid Company, that one of the seals affixed to the foregoing instrument is the seal of said Corporation, and that said instrument was signed and sealed on behalf of said Corporation, by authority of its by-laws and by resolution of its board of directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

James A. Trantes
Notary Public

(NOTARIAL SEAL)

My Commission expires
FEB. 27, 1980

EXHIBIT A

INDIVIDUAL EQUIPMENT RECORD

IER NO. 278-001Dated as of _____ to that Equipment Lease Agreement dated as of September 17, 1979.

LESSOR: MDFC Equipment Leasing Corporation
3855 Lakewood Boulevard
Long Beach, California 90846
Attention: 18A-34

LESSEE: AMERICAN COLLOID COMPANY
5100 ~~St~~offield Court
Skokie, Illinois 60076

LOCATION OF EQUIPMENT: Continental United States

ACCEPTANCE DATE:

| | | | |
|---|---|---|------------------------------------|
| New <u>X</u> Used _____ | Purchase Order No. _____ | Term: <u>20</u> year(s) _____ month(s) Commencing <u>upon delivery of</u> Equipment to Lessee. | Security Deposit: \$ <u>N/A</u> |
| Tax Capitalized or Exempt Tax Based on Rentals Remit with each Payment | <input checked="" type="checkbox"/> <input type="checkbox"/> | INSURANCE REQUIREMENTS: ALL RISK: Stipulated loss value (self insured) LIABILITY: Bodily Injury Liability \$500,000 per person/\$1,000,000 per accident; Property Damage Liability \$100,000 | |
| RENTAL: Interim Rental shall be payable as described in the Special Conditions of this document. Payment of the <u>first</u> through <u>fortieth</u> rental installments shall commence on <u>May 1, 1980</u> and shall continue <u>semi-annually</u> thereafter on the <u>1st</u> day of each <u>November & May</u> , with each such rental installment to be in the amount of \$ <u>72,520.06</u> . | | | |
| EQUIPMENT DESCRIPTION AND SERIAL NO.(s) (SEE ATTACHED INVOICES): | | | |
| Equipment Description | | Serial No. | |
| (35) Thirty-five, 100-ton, 4,000 cubic foot, Covered Hopper Railroad Cars | | LOVX 41001-41035 inclusive | |

STIPULATED LOSS VALUES

| BEFORE PAYMENT NO. | STIPULATED LOSS AS A COST PER UNIT | PAYMENT NO. ~ | STIPULATED LOSS AS A COST PER UNIT | PAYMENT NO. | STIPULATED LOSS AS A COST PER UNIT |
|--------------------------|--|--|--|----------------|--|
| 1 | \$41,934.00 | END OF LEASE TERM AND THEREAFTER | \$10,205.90 | | |
| AFTER PAYMENT | | | | | |
| 1 | \$41,934.00 | | | | |
| 2 | 42,338.16 | | | | |
| 3 | 42,297.33 | | | | |
| 4 | 42,497.37 | | | | |
| 5 | 42,685.16 | | | | |
| 6 | 42,734.14 | | | | |
| 7 | 40,721.54 | | | | |
| 8 | 40,705.21 | | | | |
| 9 | 40,627.65 | | | | |
| 10 | 40,484.76 | | | | |
| 11 | 37,757.75 | | | | |
| 12 | 37,488.31 | | | | |
| 13 | 37,161.72 | | | | |
| 14 | 36,769.82 | | | | |
| 15 | 33,801.94 | | | | |
| 16 | 33,291.65 | | | | |
| 17 | 32,724.20 | | | | |
| 18 | 32,111.84 | | | | |
| 19 | 31,462.75 | | | | |
| 20 | 30,789.16 | | | | |
| 21 | 30,082.91 | | | | |
| 22 | 29,352.17 | | | | |
| 23 | 28,588.77 | | | | |
| 24 | 27,800.87 | | | | |
| 25 | 26,976.23 | | | | |
| 26 | 26,123.02 | | | | |
| 27 | 25,233.07 | | | | |
| 28 | 24,310.45 | | | | |
| 29 | 23,351.10 | | | | |
| 30 | 22,359.09 | | | | |
| 31 | 21,330.33 | | | | |
| 32 | 20,260.75 | | | | |
| 33 | 19,150.35 | | | | |
| 34 | 18,003.21 | | | | |
| 35 | 16,815.24 | | | | |
| 36 | 15,582.37 | | | | |
| 37 | 14,308.67 | | | | |
| 38 | 12,990.07 | | | | |
| 39 | 11,622.48 | | | | |
| 40 | 10,205.90 | | | | |

SPECIAL CONDITIONS:

For each item of equipment accepted by Lessee prior to November 1, 1979, Lessee shall pay to Lessor interim rent in an amount equal to the product of (A) \$11.51 and (B) the number of days from the date of acceptance to October 31, 1979, inclusive. Said interim rent shall be due and payable on October 31, 1979. Thereafter, rent will be paid as described on the initial page of this Individual Equipment Record.

and hereby disclaims

The undersigned Lessor hereby leases to the undersigned Lessee, and the undersigned Lessee agrees to hire from Lessor the equipment described herein. The Lessee hereby acknowledges and agrees, respecting the equipment described herein:

- (1) That Lessee has inspected the equipment fully and completely as to size, model, function and conformity to the purchase order,
- (2) That the equipment is of a size, design, function and manufacturer selected by Lessee,
- (3) That Lessee is satisfied that the same is suitable for its intended purposes and any special purposes of Lessee,

(4) LESSOR IS NOT A MANUFACTURER OF THE EQUIPMENT OR A DEALER IN SIMILAR EQUIPMENT AND HAS NOT INSPECTED THE EQUIPMENT PRIOR TO DELIVERY TO AND ACCEPTANCE BY LESSEE. LESSOR BY VIRTUE OF HAVING LEASED THE EQUIPMENT UNDER THIS LEASE OR BY VIRTUE OF ANY NEGOTIATIONS IN RESPECT TO THIS LEASE HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO CONDITIONS, QUALITY, DURABILITY, SUITABILITY, MERCHANTABILITY OR FITNESS FOR USE OR FITNESS FOR A PARTICULAR PURPOSE OR AS TO ANY OTHER WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE EQUIPMENT.

(5) That the equipment is new and unused, and that the equipment has been delivered to, is now in possession of and acceptable to Lessee.

LESSOR:
MDFC EQUIPMENT LEASING CORPORATION

By

Title

[Signature]
Authorized Agent
Attest:
Charles A. Phares
General

LESSEE: AMERICAN COLLOID

By

Title

[Signature]
President

LEASE ADDENDUM NO. 1

In connection with that certain Lease Agreement dated September 17, 1979 (the "Lease") between MDFC Equipment Leasing Corporation as Lessor (the "Lessor") and American Colloid Corporation as Lessee (the "Lessee") covering certain items of equipment ("Equipment") more fully described in the Individual Equipment Records ("IER") identified as Exhibit "A" thereto, it is agreed that, upon execution by the parties hereto, this Lease Addendum No. 1 shall constitute a part of said Lease.

If for any taxable year of Lessor (or portion thereof) during which the Lease is in effect, Lessor (such term for the purpose of this Lease Addendum No. 1 meaning Lessor and the corporation with which Lessor consolidates its United States federal income tax returns) shall (i) lose any portion of the full 10% investment tax credit allowed by section 38 of the Internal Revenue Code of 1954 as amended to the date hereof (the "Code") for "new section 38 property" with respect to the purchase price paid by Lessor for any item of equipment (or, except as provided in clause (c) of this paragraph, would lose such portion but for Lessor's failure to have sufficient liability for tax within the meaning of section 46 of the Code against which to credit such portion for the taxable year of Lessor in which such item of Equipment is placed in service), and/or (ii) lose the benefit of a depreciation deduction with respect to the purchase price paid by Lessor for any item of Equipment depreciated over a period of twelve years over the Asset Depreciation Range Lower Limit of 12.0 pursuant to section 167(m) of the Code for an asset described in Asset Guideline Class 00.25, computed initially under the double-declining balance method of depreciation provided in section 167(b)(2) of the code and then switching to the sum-of-the-years' digits method of depreciation provided by section 167(b)(3) of the Code and not less than 6 months of depreciation will be allowable to the Lessor with respect to the equipment for the taxable year ending December 31, 1979 (or, except as provided in clause (c) of this paragraph, would lose the benefit of such deduction if Lessor had sufficient gross income in the taxable year of the loss of such deduction against which to apply such deduction), the Lessee shall pay the Lessor (1) a sum which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt of such sum under the laws of any Federal, state or local government or taxing authority in the United States, shall be equal to the amount of investment tax credit so lost (or which would have been lost had Lessor had sufficient liability for tax within the meaning of section 46 of the Code), (2) the amount of any interest and the amount of any penalties or additions to tax which may be payable to the United States Government by Lessor in connection with the loss of such investment tax credit, (3) with respect to each taxable year for which Lessor shall have lost the benefit of a depreciation deduction indemnified against by Lessee hereunder, a sum which, after deduction of all taxes required to be paid by Lessor in respect of the receipt of such sum under the laws of any Federal, state, or local government or taxing authority in the United States shall be equal to the amount of any additional Federal income taxes required to be paid by Lessor for such year had it had sufficient gross income within the meaning of section 61 of the Code to actually derive the benefit of such depreciation deduction) by reason of such loss of depreciation deduction (net of any savings in

Federal income taxes realized by Lessor by reason of Lessor not being required to include in its Federal gross income for the relevant period the full amount of rent paid by Lessee for such period) and (4) the amount of interest, penalties and additions to tax (including any additions to tax because of underpayment of estimated tax) which may be payable by Lessor to the United States Government in connection with the loss of such depreciation deduction, provided that the Lessee shall not be required to make any of the foregoing indemnity payments to the extent the loss of the investment tax credit and/or depreciation deduction is the direct result of: (a) any event whereby Lessee is required by the terms of the Lease to pay, and shall have paid in full the Stipulated Loss Value for such item of Equipment; (b) at any time while no Event of Default is continuing Lessor shall voluntarily transfer legal title in such Equipment to a third party; (c) the failure of Lessor to have sufficient liability for tax within the meaning of section 46 of the Code against which to credit such investment tax credit for such item of Equipment or to have sufficient gross income within the meaning of section 61 of the Code against which to apply such depreciation deduction (but only if and to the extent that such investment tax credit or depreciation deduction would not be lost if Lessor had sufficient liability for tax or sufficient gross income); and (d) the failure of Lessor to claim the investment tax credit and/or depreciation deduction in its income tax returns for the appropriate year or to follow proper procedure shall preclude Lessor from claiming the investment tax credit and/or depreciation.

Except as otherwise provided in the immediately following paragraph, the liability of the Lessee to make any indemnity payments hereunder shall become fixed at the time Lessor makes payment of the tax attributable to the portion of the investment tax credit or depreciation deduction lost, or, if Lessor is not required to make payment of tax with respect to the portion of the investment tax credit or deduction lost, the date on which Lessor files its tax return for the taxable year in which such loss occurs, and shall be due and payable within 15 days after receipt by Lessee of written notice from Lessor as to the fixing of such liability. Lessee shall pay interest at the maximum rate permitted by law on any indemnity payment not made when due. In demanding any indemnity payment under this Addendum, Lessor shall furnish to Lessee the calculations and figures upon which said demand is based.

In the event a claim shall be made by the Internal Revenue Service, which, if successful, would result in the loss of the investment tax credit or depreciation under circumstances which would require the Lessee to indemnify the Lessor for such loss, the Lessor hereby agrees to take such action in connection with contesting such claim as the Lessee shall reasonably request, in writing, provided that: (i) within 30 days after notice of such claim by Lessor, the Lessee shall request that such claim be contested; (ii) Lessor, at its option, may forego any and all administrative appeals, proceedings, and conferences with the Internal Revenue Service and may, at its sole option, either pay the tax claimed and sue for a refund in the appropriate forum selected by Lessor or contest such claim in the United States Tax Court, considering, however, in good faith such request as the Lessee shall

make concerning the appropriate forum in which to proceed; (iii) prior to taking such action, the Lessee shall have furnished the Lessor with an opinion of independent tax counsel, satisfactory to Lessor, to the effect that a meritorious defense exists to such claim; (iv) Lessee shall have indemnified Lessor in a manner satisfactory to it for any liability, loss, or expense which Lessor may incur as the result of contesting such claim, and (v) in the event Lessor shall pay the tax claimed and then seek a refund and the final determination of such claim shall be adverse to Lessor, Lessee shall pay Lessor interest at the rate of 10% per annum on the amount of the tax paid attributable to the portion of the investment tax credit or depreciation deduction lost, computed from the day of payment of such tax to the date Lessee shall reimburse Lessor for the payment of such tax. In the case of any such claim by the Internal Revenue Service referred to above, Lessor agrees to promptly notify the Lessee in writing of such claim and agrees not to make payment of the tax claimed for at least 30 days after the giving of such notice and agrees to cooperate with Lessee in good faith in order to contest effectively any such claim. If any such claim shall be made by the Internal Revenue Service and Lessee shall have reasonably requested Lessor to contest such claim and shall have duly complied with all provisions of this paragraph, the Lessee's liability with respect to the investment tax credit or depreciation deduction lost as a consequence of such claim shall become fixed upon final determination of the liability of Lessor for the tax claimed and after giving effect to any refund obtained; but in all other cases the liability of Lessee shall become fixed and payable as provided in the immediate preceding paragraph. Notwithstanding the foregoing, Lessee shall not be liable for any payment under this Lease Addendum No. 1 unless the losses described in (i) and (ii) on the initial page of this Addendum are the result of any act, failure to act or any misrepresentation of Lessee, provided, however, Lessor shall be indemnified for any adverse tax consequences suffered by Lessor resulting from movement of the Equipment to an area outside of the United States of America at other than Lessor's express written direction or instruction.

The indemnification provided herein shall survive the expiration or other termination of the Lease.

Dated as of Sept 17 1979.

LESSOR: MDFC Equipment Leasing Corporation

By: Darryl R. Christensen

Its: Authorized Agent

(CORPORATE SEAL)

ATTEST:

By: Charles H. L.

Its: Secretary

LESSEE: American Colloid Company

By: Ray H. Hume

Its: President

(CORPORATE SEAL)

ATTEST:

By: Mary Veronica Hume

Its: Assistant Secretary

